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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
———————

Ex parte RUIGUO YANG and HENRY COLLINS
———————

Appeal 2008-2771
Application 09/866,375
Technology Center 2100
———————

Oral Hearing Held: August 13, 2008
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Before JEAN R. HOMERE, ST. JOHN COURTENAY III, and
STEPHEN C. SIU, *Administrative Patent Judges.*

ON BEHALF OF THE APPELLANT:

JOHN D. LANZA, ESQ.
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The above-entitled matter came on for hearing on Wednesday, August

13, 2008, commencing at 10:57 a.m., at the U.S. Patent and Trademark

Office, 600 Dulany Street, 9th Floor, Alexandria, Virginia, before Jennifer

M. O'Connor, Notary Public.

1   THE CLERK: Calendar number 20, Mr. Lanza.

2   MR. LANZA: Good morning.

3   JUDGE HOMERE: Good morning, Counselor. You have 20 minutes

4 and feel free to begin whenever you're ready.

5   MR. LANZA: Thank you. Thank you. My name is John Lanza,

6 PTO registration number 40060, and I represent Citrix Systems in appeal

7 2008-2771. This appeal comes to this board on the rejection of all pending

8 claims as obvious in view of three prior art references. The claims are

9 currently pending in serial number 09866375.

10   Citrix Systems asks this board to reverse the examiner's rejection of

11 all the pending claims as obvious and remand this application back to the

12 examiner with instructions to allow it over the prior art of record.

13   JUDGE COURTENAY: I do have to say, we have the power to

14 affirm or reverse, or affirm in part, but the examining corps makes the

15 ultimate decision as to what is allowed. We don't allow any cases here at the

16 Board.

17   MR. LANZA: Understood. Thank you.

18   JUDGE COURTENAY: Could you go to the preamble issue to

19 begin; that would be helpful for us? I understand that the examiner, for the

20 first time in the prosecution history, he's saying that he's not giving certain

21 limitations in the preamble patentable weight?

22   MR. LANZA: That is what it appears to be. In his examiner's reply,

23 the examiner stated twice -- sorry, the examiner's answer, the examiner

24 stated twice that limitations from the specification are not read into the

1   claims and that the preamble had not been given patentable weight because

2   the recitation that we were relying on occurs in the preamble

3   If we can turn to the claims briefly. And I thank you for bringing this

4   issue up, because I admit that I was struggling with -- I've got my argument,

5   but now I have this new issue that I have to deal with, so I appreciate having

6   the chance to just deal with --

7   JUDGE COURTENAY: Well, we do commend you for the proper

8   use of a Reply Brief. The examiner has raised a new issue in the Answer for

9   the first time and you have properly responded to it in the Reply Brief.

10   MR. LANZA: Thank you. It's our position that the claims, as they're

11   currently pending, the preamble is limiting for two reasons. One, the claim

12   elements rely on the preamble for antecedent basis, which I believe is a well-

13   settled basis for viewing the preamble as a claim limitation. There's also a

14   doctrine that we refer to in our reply brief that states that if the applicant

15   relies on the preamble in his or her arguments for patentability, that that is --

16   that is then an indication that the preamble should be considered a claim

17   limitation. I believe that's the Catalina Marketing case that we pointed to in

18   our Reply Brief.

19   And if we -- if we look at claim 1, claim 12 is similar. But claim 1

20   recites a method for controlling by a server the formation of an off-screen

21   surface at a client, and then I'll allay that and we'll look at the first claim

22   element instructing the client to select a first memory region. There's no

23   antecedent basis for client other than in the preamble, and so we have always

24   viewed this claim -- we continue to view this claim as a client server

1 implementation where the server is instructing the client to perform specific

2 tasks.

3   The server is instructing the client to create or form an off-screen

4 surface buffer in its memory. It then transmits in the second step an indicia

5 of some graphical data to the client. Graphical data is referred to in the

6 specification at paragraph five as, for example, bit-mapped graphical data,

7 encoded bitmaps, glyphs and line data.

8   The reason that an indicia of the graphical data is sent to the client is

9 that this entire application is specifically directed to techniques to minimize

10 the bandwidth necessary to communicate between a client and a server. The

11 server then instructs the client to copy the graphical data associated with the

12 indicia to a particular location in that first memory region that it has been

13 instructed to set up.

14   So a bitmap is sent down. It's cached at the client. There's a cache tag

15 of some sort associated with that bitmap or that line. That cache tag has

16 been sent back to the client. The client is instructed by the server to collect

17 that bitmap and write it into its off-screen buffer.

18   That is crucial to understanding the arguments that we've made

19 throughout. And in fact, up until the examiner's answer, we had understood

20 the examiner to be saying that all of the prior art references -- or I should

21 say not all -- the two major prior art references, which are *CLAPP* and

22 *Hanko*, both taught a server instructing a client to form an off-screen buffer

23 and to store data in that off-screen buffer.

24   I can go through why neither *CLAPP* nor *Hanko* teach that, teach a

25 server instructing a client to do that. In the answer -- this appears for the

1   first time -- to be in the examiner's Answer for the first time. The examiner

2   appears to have realized that *Hanko* and *CLAPP* do not teach that and

3   instead relies on a broader reading of the claim, which tries to read out this

4   server requirement in order to make *Hanko* and *CLAPP* apply.

5   JUDGE HOMERE: Let's turn to what the prior art teaches. From

6   what I understand from the record, the prior art teaches you have two

7   computers that are communicating, right, they're sharing information. So

8   one computer accesses or opens up an application and allocates opening that

9   application, allocates an off-screen to a buffer, right, an off-screen surface to

10   a buffer, and then sends communication to the other computer and the other

11   computer operates in the same fashion and it pretty much transmits whatever

12   image that they're looking at to the other computer?

13   MR. LANZA: I think that's right, Your Honor. I believe we're

14   talking about CLAPP right now, which is a videoconferencing system which

15   performs as you describe. There are -- in *CLAPP*, it's a symmetric system in

16   that there is a local host and a remote host connected by a communication

17   channel, which is number 82 in *CLAPP*, and the local host is described as

18   creating a local off-screen buffer into which it writes local pixel data.

19   The local host and the remote host are able to share their off-screen

20   buffers and then the remote host will copy into its display buffer from its

21   own off-screen buffer. So what is missing from *CLAPP* is that in *CLAPP*,

22   the local host never instructs the remote host to one, create an off-screen

23   buffer, because it already exists. The remote host has to have it because it's

24   a symmetrical system.

1   JUDGE HOMERE: There's nothing in the claim that says that

2   requires the server to instruct the client to create an off-screen buffer. It

3   instructs the client to select -- off-screen buffer. And so wouldn't it be

4   reasonable for one to construe the teaching of *CLAPP* as saying that once the

5   client, the first client transmits the image to the other client, a buffer, an off-

6   screen buffer is allocated subsequently to receiving that message from the

7   other client?

8   MR. LANZA: If you were to interpret *CLAPP* that way -- I don't

9   believe that *CLAPP* does that. I believe that *CLAPP* always has that buffer

10   allocated at startup time. For the sake of argument, if I were to interpret

11   *CLAPP* to disclose that when the local host sends data to the remote host,

12   that upon receipt of that data the remote host creates its own buffer, the local

13   host is not instructing the client that -- it's not instructing the remote host to

14   create that buffer.

15   JUDGE HOMERE: Why not?

16   MR. LANZA: It's simply -- it's simply sending data. Your point

17   though, I thought, was a good one and an accurate one and I appreciate you

18   raising it, which is the claim language is actually instructing the client to

19   select a first memory region for allocation to the off-screen buffer. Again,

20   that -- one could argue whether selection or creation are different. They are,

21   because in the -- in our specification, we talk about having two areas in the

22   memory region and being able to select between them for the data. But the

23   transfer of data from CLAPP -- in *CLAPP* from the remote host to the local

24   host, is merely just that; it's a transfer of data.

1   JUDGE HOMERE: Yeah, but the allocation of a buffer, if you will,

2 in the remote host is subsequent to receiving that data. Therefore --

3   JUDGE COURTENAY: Well, it actually says in column 12 of

4 *CLAPP*, lines three and four, that the communication may proceed

5 subsequently to or concurrently with the processing step. So the

6 transmission of the data can happen concurrently or subsequent to what

7 happens at the local host.

8   I've been reviewing *CLAPP*, Figure 12, and particularly columns 11

9 and 12, and in Figure 12, in block 652, we have a disclosure that at the

10 remote site there's this copying of local pixel data to the remote off-screen

11 window buffer. But we don't have a real teaching that tells us when that

12 buffer's allocated, more specifically, how it's allocated, other than as you

13 raised the point that we have symmetric systems here.

14   We know they're symmetric because in column 12, lines seven

15 through eight, it discloses -- *CLAPP* discloses a remote host computer

16 system 264 preferably operates visual conferencing application software

17 substantially similar to that operating on a local host computer system 244.

18   JUDGE HOMERE: My question still stands though, in the sense that,

19 well, is that a possible interpretation of that teaching? Wouldn't it be

20 reasonable for one of ordinary skill in the art to say that, well, I have this

21 local client and then upon opening an application, it allocates a buffer, sends

22 -- transmit data to a remote -- a remote client and then the remote client

23 allocates -- subsequently to receiving that data, allocates an off-screen buffer

24 in order to establish the communication?

1   MR. LANZA: I respectfully submit, Your Honor, that it's not a

2 reasonable interpretation and this is why. In the system of CLAPP, both

3 hosts have to be operating the same software, so the software has to behave

4 the same whether it's a local host or a remote host. That off-screen buffer

5 that is created on one of the hosts, I don't care which one, is created when

6 the videoconferencing system is set up, because the off-screen buffer is used

7 to move data in and out of the windows on the computer that is attached to

8 the videoconferencing host. So that off-screen buffer is always going to be

9 there when the system is operating.

10   JUDGE HOMERE: So you are assuming -- you are assuming that

11 both of them -- both the local and the remote clients launched that same

12 application before they start communicating, therefore, because -- from the

13 teaching of *CLAPP*, upon launching that application, that buffer is created,

14 right?

15   JUDGE COURTENAY: Actually, that's -- he's pointing to column 11

16 and we do have information about how the local host computer system

17 allocates the buffer at lines 32 through approximately 36 of column 11. At

18 line 32, it discloses -- the *CLAPP* reference discloses the user at step 628

19 then selects a local active application window 602 from the menu 600 for

20 sharing with a remote conferencing site.

21   JUDGE HOMERE: That is the local --

22   JUDGE COURTENAY: The local host computer system 244 at step

23 630 preferably allocates an appropriate amount of system memory to

24 accommodate a local on-screen window buffer 604. So we know how the

25 local host system allocates its memory and we also have information that

1   these two systems, the remote host and the local, are symmetric. They

2   operate the same way. We don't appear to have information as to the timing

3   of how this happens at the remote site beyond what we have with respect to

4   the local host.

5   JUDGE HOMERE: And my question, as a way to fill the gap, as far

6   as the information that's missing from this reference, wouldn't it be

7   reasonable to say that while you start with the local host first, you launch

8   that application, the buffer's allocated, you transmit data over to the remote

9   host, and the remote host allocates the buffer?

10   MR. LANZA: If it is reasonable to assume that, that is not a teaching

11 of this specification. Now you're requiring the specification to act as an

12 obviousness reference, because this specification does not teach, as required

13 by the law, that command to set up the off-screen buffer at the remote host.

14 An examiner is relying on *CLAPP* to teach that one of the -- one of the hosts

15 instructs the other host to create the local buffer, which it doesn't do; it

16 doesn't teach that.

17   JUDGE HOMERE: What I'm saying is, if the local buffer is created,

18 if the remote buffer is created subsequently to receiving the data from the

19 local host, wouldn't that be construed as -- the creation of the remote buffer,

20 the buffer at the remote host becomes construed as being created based on an

21 instruction received from the local host?

22   MR. LANZA: Yes, Your Honor, but could also be construed as being

23 created, because the remote host has decided that it wants to create an off-

24 screen buffer. It may receive an indication from the local host that data is to

25 be shared, and it elects not to set up an off-screen buffer. It may elect to just

9

1   direct that data directly into the on-screen buffer because of various

2   conditions. Usually off-screen buffers are used when windows are clipped,

3   and you don't want to show some of the data that's actually in the window,

4   so you write that to an off-screen buffer.

5   There's no -- there's no teaching at all on how the local host is

6   going to decide whether or not to set up an off-screen buffer and there's

7   certainly --

8   JUDGE HOMERE: The remote host, you mean?

9   MR. LANZA: I may have misspoke, I'm getting confused with local

10 host or remote host at this point. They're both hosts. But whichever --

11 whichever system is getting the data from the other system, there's no --

12 there's no teaching at all on how or whether that system decides to set up an

13 off-screen buffer. We just know that there is -- there is later some discussion

14 about the remote host could have an off-screen buffer there.

15   JUDGE COURTENAY: The *CLAPP* reference doesn't appear to

16 disclose exactly what triggers this allocation. If I look at Figure 12, step

17 628, the user selects this local active window application and then

18 subsequent to that step, we have this memory allocation step 630. There's

19 really no information that I can see from this reference that tells us what

20 triggers this allocation.

21   MR. LANZA: I agree, and that's our position, that this does not teach

22 one of the systems instructing the other to create or to select memory for an

23 off-screen buffer. We don't know -- *CLAPP* doesn't teach how that gets

24 selected.

1   JUDGE HOMERE: But you would agree though -- you would agree
2   though if -- if the creation of the buffer at the remote host is done subsequent
3   to receiving that image or that data from the remote -- the local host, that
4   could be construed as an instruction that's creating the buffer at the remote
5   host upon receiving an instruction from the local host?
6   (Pause)
7   JUDGE COURTENAY: Don't you argue in your Briefs that the mere
8   receiving of data is not receiving an instruction?
9   MR. LANZA: Yes, and I'm trying to decide how to respond to Your
10   Honor's question because it could be construed to be that, but I would -- I
11   would argue that a command . . . , we've made a distinction in paragraph two
12   between graphical data and other types of network traffic. And so an
13   instruction is not graphical data. So an instruction is not data that might
14   come from an off-screen buffer such as a bit-mapped -- bit-mapped
15   graphical data, encoded bitmap, glyphs or line data.
16   It's something different that is an explicit indication to the other host,
17   you need to set up an off-screen buffer because I'm about to throw -- I'm
18   about to throw data at you and I want you to store it in there.
19   JUDGE HOMERE: Do you have anything else?
20   MR. LANZA: I do. The examiner, in his reply, has admitted that the
21   other two elements of claim 1 are not in *CLAPP*. I think it is worth speaking
22   briefly about *Hanko*, because the examiner refers to *Hanko*, which is a Sun
23   Microsystems patent, that talks about efficient methods of displaying tiled
24   graphical data at a remote computer.

1   It appears that from *Hanko*, *Hanko* teaches that while off-screen

2   buffers are good, off-screen buffers aren't available at all devices and so this

3   is a technique for efficiently replicating tile data in systems where one does

4   not want to use or cannot use an on-screen buffer. We make these

5   arguments in the Brief as well.

6   As you know from our Briefs, I don't believe *Hanko* should be

7   considered as prior art, as analogous prior art, at all because one of ordinary

8   skill in the art looking for ways to improve off-screen buffering techniques

9   in a client server system would not look to a reference that in its beginning

10   pages says, off-screen buffers are wonderful, but lots of computers don't

11   have off-screen buffers so we're going to talk about techniques for doing this

12   without using off-screen buffers.

13   *Hanko* also, therefore, does not teach instructing a client to select a

14   first memory region to be used as an off-screen buffer, because it teaches

15   away from off-screen buffers. It doesn't want you to use off-screen buffers.

16   In fact, it assumes that you're going to receive -- that the client is going to

17   receive that graphical data from the server and write it directly to the on-

18   screen buffer and use some techniques to replicate that tiled data over and

19   over and over again.

20   In fact, the techniques that he uses is that with respect to bit-mapped

21   data. It sends some attributes of that data. It sends the size. It sends the

22   repetition number, and then it uses -- the client uses that information to

23   repeat the bit-mapped tile.

24   So in fact, the second step, which is transmitting indicia of a graphical

25   data, the examiner's taken the position that indicia can be almost anything.

1   However, if you look at our specification at paragraph 71, we talk about

2   what indicia is and it's about midway down through the paragraph. But it

3   says that the server agent issues a command to the client agent to form the

4   off-screen surface in the client's volatile memory 114. The command is then

5   accompanied by an encoded representation of the off-screen surface if this is

6   the first instance of the off-screen surface or by an index or a fuzzy key if

7   the off-screen surface has been previously transmitted.

8   The indicia that is recited to in that step of claim 1, and a similar step

9   in claim 12, is not attribute data about the graphical data that is coming

10 across, but is really referring to cache indicia, such as a cache tag or a fuzzy

11 key, which we talk about earlier in the specification. That point is reinforced

12 by claim 2, which then further recites that step -- that claim 1 further

13 comprises the step of specifying a plurality of attributes for the graphical

14 data.

15   So *Hanko* does not teach or suggest instructing a client to select

16 memory to form an off-screen surface. It also doesn't teach or suggest

17 transmitting indicia of the graphical data to the client. I would submit that

18 *Hanko* also doesn't teach or suggest instructing the client to copy the

19 graphical data. At best, what *Hanko* teaches is that graphical data is sent to

20 the client with instructions on how to copy.

21   *Hanko* describes or discloses that the client itself makes the decision

22 to copy that bitmap glyph over and over and over again in its memory. So to

23 sum up, because I believe I'm running out of time, it's our position that the

24 preamble is limiting, that *CLAPP* does not teach or suggest instructing the

1   client to select a first memory region. At best, it teaches that there are two

2   memory regions that are used for off-screen buffers.

3   The examiner admits that the other two steps of claim 1 and similar

4   steps in claim 12 are not taught or suggested by *CLAPP*. *Hanko* does not

5   teach or suggest these elements, for the reasons I've stated, and *Pierson*,

6   which we haven't talked about much, but I think is a fairly minor reference

7   here, also does not teach or suggest these. So any combination of these

8   references is going to fail to teach or suggest each and every element of

9   claims 1 and 12. So it's our view that the rejection of claims 1 through 20 is

10   not obvious in view of these references, is improper and ought to be

11   reversed.

12   JUDGE HOMERE: Anything else? All right, thank you very much.

13   MR. LANZA: Thank you.

14   (Whereupon, at 11:20 a.m., the proceedings were concluded.)

15